

Examples of AP mistakes, mischaracterizations & omissions

On (not) being there

AP reporter dreams up lack of a press conference

Feb. 7, 2014

AP CLAIM: *[T]he media were not given an opportunity to ask [McCrory] questions.*

FACT: The Governor took about 10 minutes of questions from the media.



“Tests show different arsenic levels in N.C. spill,” Feb. 7, 2014

Omission is nine-tenths of the story

1 > 0!!! (1 < 16)

Feb. 7, 2014

AP CLAIM: *Since his unsuccessful first campaign for governor in 2008, campaign finance reports show Duke Energy, its political action committee, executives and their immediate families have donated at least **\$1.1 million** to McCrory's campaign and affiliated groups that spent on TV ads, mailings and events to support him.*

OMISSION: Duke employees have contributed to candidates of both parties in this state. It's one of the largest employers in the state. Duke gave \$16 million to the Democratic National Committee in 2012 for hosting the convention in Charlotte. If you are looking for a cozy relationship, maybe you should look to the Democrats who took little to no action against Duke Energy when it came to coal ash ponds.

"NC regulators shielded Duke's coal ash pollution," Feb. 7, 2014

Concern doesn't clean

AP reporter praises emotions over actions

Feb. 7, 2014

AP CLAIM: *Environmental groups and federal regulators had been **concerned for years** about problems at Duke's 31 coal-ash waste ponds in North Carolina. Those concerns intensified after a 2008 disaster in Kingston, Tenn., where 5 million cubic yards of ash burst out of a basin, covering 300 acres and devastating a nearby river. The cleanup has cost \$1.2 billion.*

BALANCE: If environmental groups have been "concerned for years" about coal ash ponds, why did the SELC wait until January 2013, just days after the inauguration of the state's first Republican governor in 20 years, to send a letter of its intent to sue over coal ash? Did the reporter even ask?

If "concerns intensified" in December 2008, it must have been an intense four years indeed getting that 13-page letter together. And what was Governor Perdue's DENR doing that whole time? Yet when new DENR leadership appointed by Governor McCrory pulls together a suit within 75 days of taking office, that's not an accomplishment?

"NC regulators shielded Duke's coal ash pollution," Feb. 7, 2014

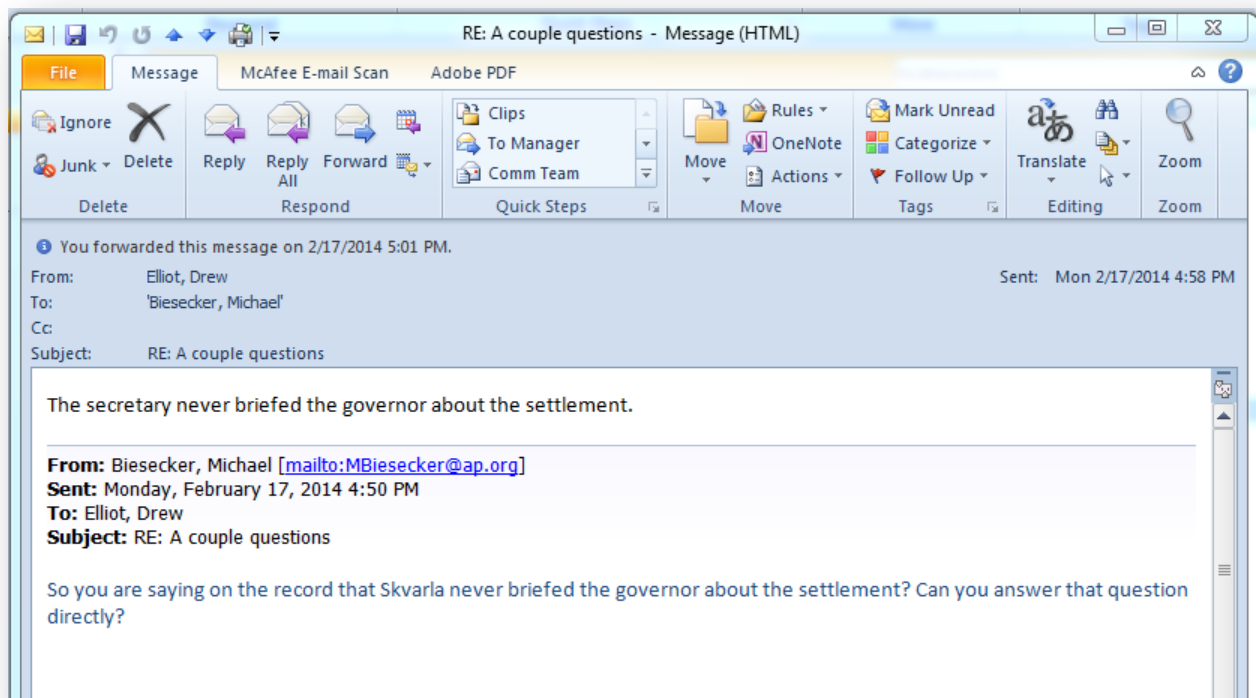
Other than that, the story was accurate

AP reporter invents "facts" to fit narrative

Feb. 17, 2014

AP CLAIM: *North Carolina's top environmental official **says he briefed Gov. Pat McCrory about a negotiated settlement** with Duke Energy that would have fined the \$50 billion corporation \$99,000 to resolve violations for groundwater contamination leaching from two huge coal ash dumps.*

FACTS: Secretary Skvarla never briefed the Governor on the terms of the proposed consent order, and he never said that he did.



"NC Gov. McCrory Briefed on Coal Ash Deal With Duke," Feb. 17, 2014

The worst of the worst

Not even a political campaign would try this stunt

March 13, 2014

AP CLAIM: *Within days, the emails show a Duke lobbyist contacted the N.C. Department of Environment and Natural Resources, where staff exchanged messages discussing "how Duke wants to be sued."*

FACTS: This is the worst of the worst. The emails clearly show that the Attorney General's office was trying to discern Duke Energy Progress' proper legal name:

From: Cooper, Kathy [kcooper@ncdoj.gov]
Sent: Monday, March 18, 2013 6:33 AM
To: Watts, Debra
Subject: Draft Complaint Attorney Client Privileged and Attorney Work-Product

Debra,

I meant to send my e-mail Attorney Client Privileged.

Please discard the previous e-mail and send this one instead.

Attached is the draft of the Complaint. Please send it to everyone who needs to see it before our conference call today at 11.

I haven't decided on the Exhibits but I can let you know later tomorrow morning.

I need to check with Lacy about how Duke wants to be sued. Right now this complaint names Carolina Power and Light Company d/b/a Progress Energy Carolinas, Inc. as the defendant. I noticed on the Secretary of State's website that Duke is changing the name, of Progress Energy as well to Duke Energy Progress. CP&L's shareholders voted for the name change on 3/8/13 but it is not effective until April 29, 2013.

I'll get that part straight. Just wanted you to know.

Please just add me to the conference call. I have to contact someone this morning and need to be in my office.

Thanks,

“APNewsBreak: Emails show coordination between Duke Energy and NC regulators on coal ash suits,”
March 13, 2014

Journalism or public relations?

It is customary to tell both sides of the story

March 13, 2014

AP CLAIM: *Internal emails between staff at North Carolina's environmental agency suggest state regulators were coordinating with Duke Energy before intervening in efforts by citizens groups trying to sue*

the company over groundwater pollution leeching from its coal ash dumps.

The emails were provided Thursday to The Associated Press by the Southern Environmental Law Center, which had filed notice in January 2013 of its intent to sue the nation's largest electricity company under the Clean Water Act.

Within days, the emails show a Duke lobbyist contacted the N.C. Department of Environment and Natural Resources to set up a meeting. The emails suggest the company and regulators were in frequent contact, with a lawyer for Duke even advising the state on legal strategy in an April 30, 2013, email.

OMISSION: How is it possible to write this story without mentioning that DENR also met with SELC lawyers multiple times and that a bevy of correspondence mirrors the collegial tone of the emails among DENR, Duke and the AG's office?

If the reporter had done any actual reportorial work, instead relying on information he admits was "provided... to The Associated Press by the Southern Environmental Law Center," DENR would have been happy to provide these examples. Instead, **the initial story hit the wire without the reporter asking for any reaction or explanation from the agency.**

This article is a clear example of a pattern in which the reporter has obviously had the information for a story for a while, his source being obvious, and gives the agency little or no time to respond. It is a slanted, coordinated effort that makes the AP into a public relations agency for certain special-interest groups instead of a reporting collective.

"Emails show ties between Duke, regulators," March 13, 2014

Reporter or columnist?

This is totally my personal opinion, but...

March 13, 2014

AP CLAIM: *The agency ultimately used its authority to intervene in the lawsuit, quickly negotiating a proposal where the \$50 billion company would pay a \$99,100 fine to settle environmental violations but be under no requirement to actually clean up its pollution.*

SLANT: How does one define “quickly”? Why not just say ‘two months’ and let the reader decide if that is quick or slow. Or provide examples of similar settlements that took much longer to negotiate (if those exist)?

“Emails show ties between Duke, regulators,” March 13, 2014

But that would take so long to explain...

This is easier, even if it's inaccurate

March 13, 2014

AP CLAIM: *The agency ultimately used its authority to intervene in the lawsuit, quickly negotiating a proposal where the \$50 billion company would pay a \$99,100 fine to settle environmental violations but be **under no requirement to actually clean up its pollution.***

FACT: It is wrong to say that the proposed consent order contained “no requirement” to clean up contamination. The consent order was based largely on the existing, data-driven remediation process in the EMC’s groundwater rules. While the rules give a violator options for how it proposes to remediate contamination, they absolutely require any and all illegal contamination to be cleaned up. Saying that DENR didn’t require clean-up in the consent orders is tantamount to saying a police officer is letting a murder suspect “off the hook” if he arrests him and charges him with murder, but fails to prosecute and convict him on the spot.

“Emails show ties between Duke, regulators,” March 13, 2014

Math is hard

Intrepid AP reporter doesn't let facts get in the way of a good story

March 24, 2014

AP CLAIM: *The state Department of Environment and Natural Resources has hired Mark T. Calloway of Charlotte to help respond to **20 grand jury subpoenas** the agency and its employees have received after the Feb. 2 spill at Duke's Eden plant, which coated 70 miles of the Dan River in toxic sludge.*

FACT: The department received three subpoenas, not 20. While persons within DENR may have received subpoenas, in the context of this story “the agency” is clearly the entity in question, so the answer is three. In other words, Calloway represents the Department, and thus does not and cannot represent persons (including current or former DENR employees) who may have received subpoenas.

What’s good for the goose

(Don’t mention the gander, it weakens your case!)

March 24, 2014

AP CLAIM: *After state officials met with the company's chief lobbyist, the N.C. Department of Environment and Natural Resources used its authority to file environmental violations against all of Duke's 33 coal ash pits across the state.*

OMISSIONS: It seems quite relevant to add that DENR also met with environmental groups, including its chief lawyer/lobbyist/spokesman on coal ash, hearing their concerns, before DENR filed suit against Duke.

It would also be relevant to point out that the proposed settlement tried to eliminate protracted litigation and expedite clean-up precisely as special-interest group letters advocated:

Richard Gaskins, Executive Director
Catawba Riverkeeper Foundation, Inc.
421 Minuet Lane, Suite 205
Charlotte, NC 28217-2784
(704) 679-9494

The Foundation believes that a negotiated settlement of these violations, codified through a court-approved consent decree, would be preferable to protracted litigation. However, if we are unable to reach an enforceable settlement agreement, the Foundation is prepared to file suit in the United States District Court for the Western District of North Carolina pursuant to § 505(a) of the CWA, 33 U.S.C. § 1365(a)(1), after sixty days from the date of this letter. This lawsuit will seek injunctive relief, appropriate monetary penalties, fees and costs of litigation, and such other relief as the Court deems appropriate.

If you have any questions concerning this letter or the described violations, or if you believe this notice is incorrect in any respect, please contact the undersigned counsel, the Southern Environmental Law Center, at (919) 967-1450 (tel.), (919) 929-9421 (fax). During the notice period, we are available to discuss this matter with you, but suggest if you desire to institute negotiations in lieu of a civil action that you do so immediately as we do not intend to delay prosecution of this suit once the notice period has expired. Please be advised that the failure to remedy any of the violations set forth in this letter can result in a court order enjoining further violations and imposing civil penalties of \$37,500 per violation, per day for each

From SELC's March 26, 2013 letter of intent to sue, p 11.

Also, it is highly relevant that the SELC initially thanked DENR for taking the action before they changed their talking points:

N.C. water quality agency sues Duke over Asheville coal ash pollution

Charlotte Observer (North Carolina)

March 22, 2013 Friday

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The Charlotte Observer

Found on Charlotte .com

Length: 437 words

Byline: Bruce Henderson

bhenderson@charlotteobserver.com

Dateline: March 23 2013

Body

A North Carolina environmental agency asked Friday for a court injunction against a Duke Energy subsidiary over groundwater apparently contaminated by coal ash at an Asheville power plant.

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"We appreciate and are supportive of the fact that the state is taking action. Right now we're evaluating what our next appropriate steps are," said Amelia Burnette, an Asheville-based lawyer for the Southern Environmental Law Center..."

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Three environmental groups gave notice in January that they intended to sue Progress Carolinas over pollution from the Asheville plant. The groups said pollutants from coal ash stored in ponds at the plant were detected in the French Broad River.

The 60-day notice expires at the end of next week.

"We appreciate and are supportive of the fact that the state is taking action. Right now we're evaluating what our next appropriate steps are," said Amelia Burnette, an Asheville-based lawyer for the Southern Environmental Law Center, which represents the Sierra Club, Waterkeeper Alliance and Western North Carolina Alliance.

Susan Massengale, a spokeswoman for the Division of Water Quality, said Friday's court filing "was among our tools we could use in light of the SELC litigation."

Massengale wouldn't comment on whether the division expects to take legal action in regard to other Duke plants.

Henderson: 704-358-5051 Twitter: @bhender

Classification

Maybe he just forgot

AP reporter reports “facts” he knew were wrong

Nov. 13, 2014

AP CLAIM: *North Carolina's environmental agency is currently involved in several lawsuits and enforcement actions involving Duke and its ash dumps.*

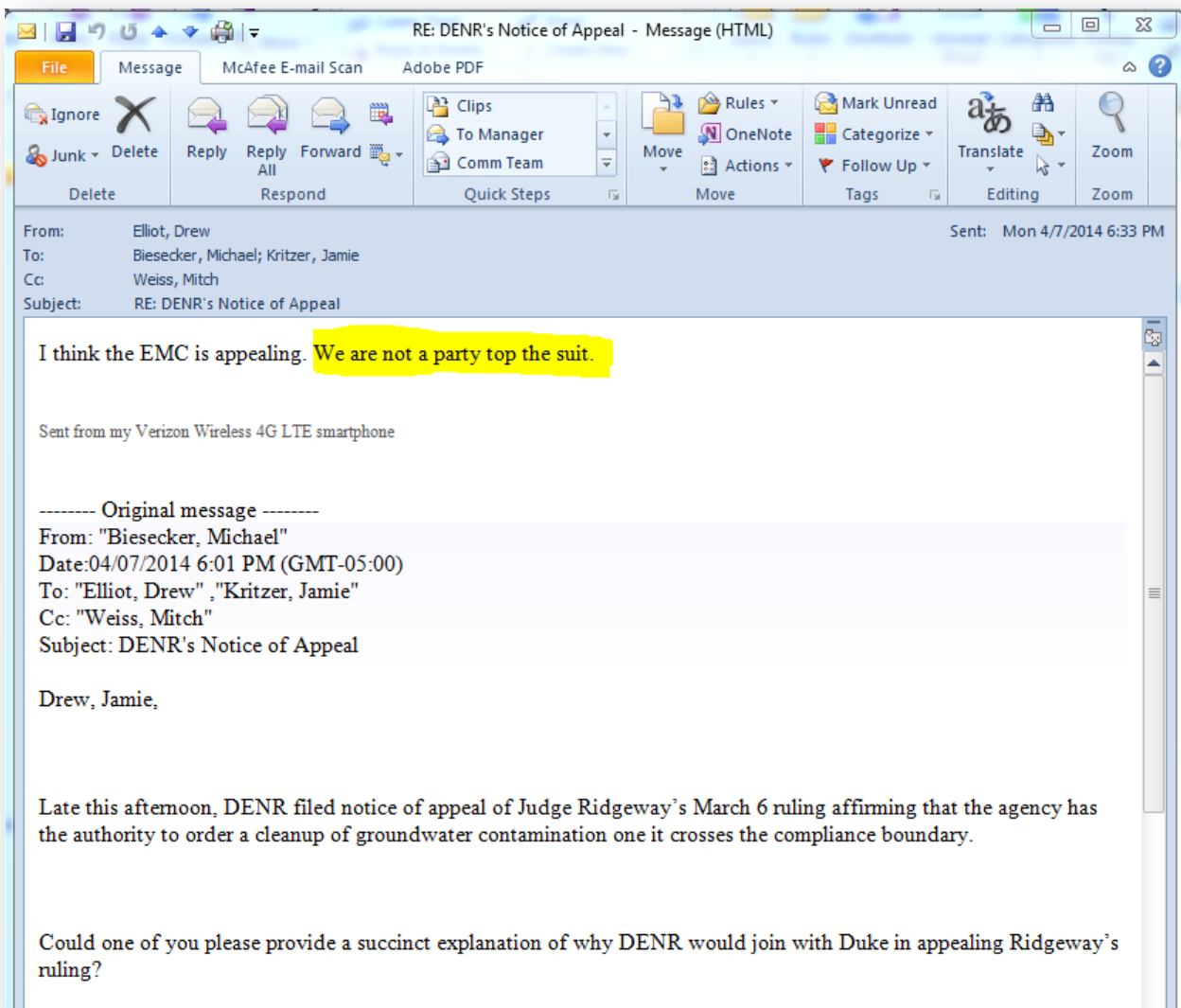
Among the key issues under litigation is what the state agency can require a company to do when groundwater contamination from a waste pit crosses into a neighboring property or pollutes rivers and lakes.

The Southern Environmental Law Center sued the state last year on behalf of a coalition of environmental groups challenging the way groundwater regulations were being applied to coal ash dumps.

Duke intervened in the lawsuit to support the state's existing legal interpretation, which has allowed the company to study the pollution leaking from its dumps without being forced to clean it up.

FACT: DENR is not a party to the lawsuit to which the reporter refers. The Environmental Management Commission (EMC), not the department, has authority to interpret EMC rules. The EMC and Duke Energy appealed the ruling, not DENR.

And the reporter knew this:



"Ex-Duke Energy lawyer now advising NC regulators," Nov. 13, 2014

Duplicity sells

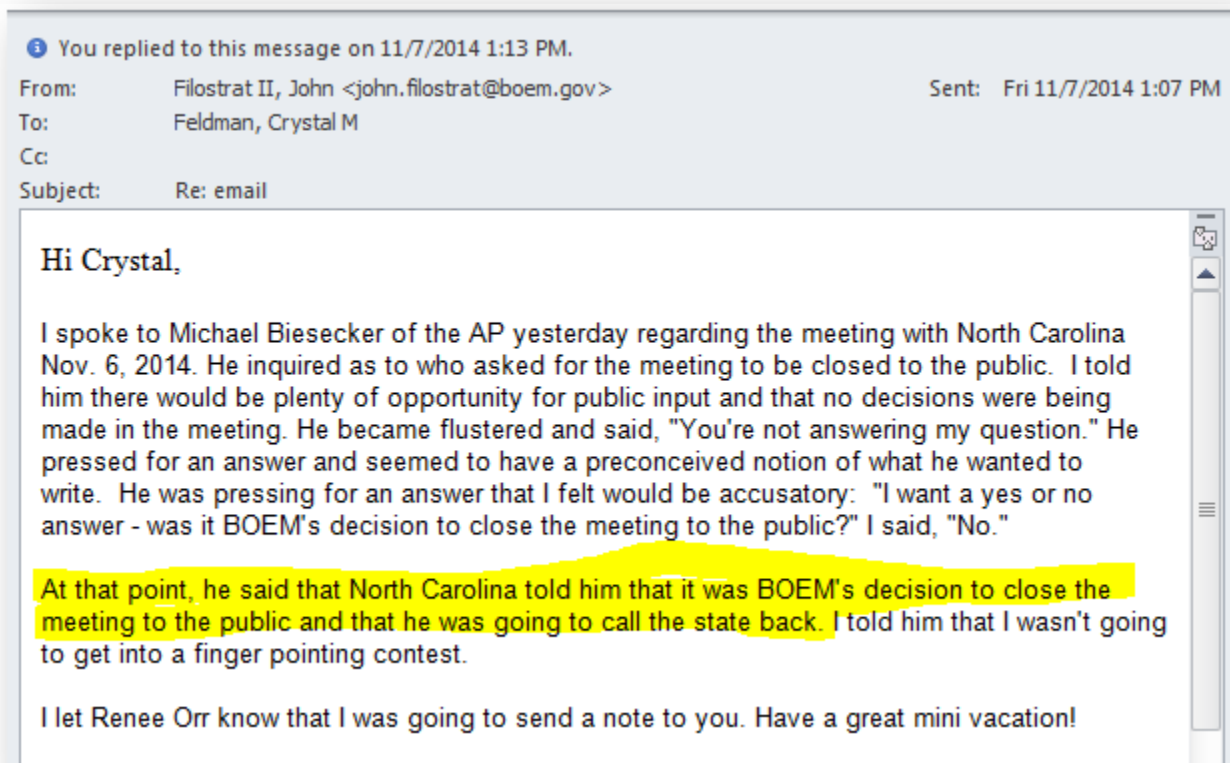
What's the big deal? Lying is part of my job, right?

Nov. 6, 2014

AP CLAIM: *John Filostrat, spokesman for the federal Ocean Energy Management bureau, denied his agency asked that the meeting be closed to the public.*

FACT: The DENR stated, via an email to the reporter, that “[t]he agenda and format of the meeting was collectively developed by participating federal and state agencies.” North Carolina never said it was BOEM’s decision to close the meeting to the public – see email below. The reporter later falsely accused BOEM of stating it was North Carolina’s decision to close the meeting to the public when questioning the governor after the meeting on Nov. 6. Neither BOEM nor the state said the meeting was closed per the other’s request.

From former AP reporter John Filostrat:



“North Carolina environmental agency hosts closed-door meeting on off-shore oil drilling plan,” Nov. 6, 2014

Broken pipe spills coal ash in Dan River near Eden

Wed Feb 5, 2014.

Associated Press |

A pipe under a coal ash pond broke in northern North Carolina, releasing an unknown amount of coal ash into the Dan River, Duke Energy said Monday.

The pipe broke Sunday afternoon at the now-closed Dan River Steam Station in Eden, the utility said. The ash pond covers about 27 acres, and the dam holding the water in was not affected by the leak, officials said.

A water quality-monitoring team is checking the river, but Duke Energy said downstream water supplies have not been affected.

Officials in Danville, Va., which draws its water from the Dan River downstream from the ash pond, said the spill did not affect the quality of the city's water supply.

"All water leaving our treatment facility has met public health standards. We do not anticipate any problems going forward in treating the water we draw from the Dan River," said Barry Dunkley, division director of water and wastewater treatment for Danville Utilities.

The N.C. Department of Environment and Natural Resources said in a statement that it is investigating, as well as helping to monitor water quality and work with Duke energy to clean up the spill.

Engineers have not figured out exactly how much ash and water made it into the Dan River in Rockingham County, although Duke Energy promised to make that figure public as soon as calculations are complete.

Environmental groups, some of which have sued Duke Energy over 14 coal ash dump sites in North Carolina, sharply criticized the utility for waiting for a day before reporting the spill to the public and not immediately releasing information such as results of water quality tests on the river.

"State environmental officials failed to immediately notify the public about a major toxic spill in one of our precious waterways. Coal ash is extremely dangerous and the communities near the spill deserve information about their health and safety," Stephanie Schweickert, affiliate organizer with the North Carolina Conservation Network, said in a statement.

Coal ash is the waste left after burning coal. It contains arsenic, mercury, lead, and over a dozen other heavy metals, many of them toxic.

River turns to gray sludge

Posted: Wednesday, February 5, 2014 10:42 pm

ON THE DAN RIVER — Canoe guide Brian Williams dipped his paddle downstream from where thousands of tons of coal ash has been spewing for days into the Dan River, turning the wooden blade flat to bring up a lump of gray sludge.

On the river bank, hundreds of workers at a Duke Energy power plant in North Carolina scrambled to plug a hole in a pipe at the bottom of a 27-acre pond where the toxic ash was stored.

Since the leak was first discovered by a security guard Sunday afternoon, Duke estimates up to 82,000 tons of ash mixed with 27 million gallons of contaminated water has spilled into the river. Officials at the nation's largest electricity provider say they cannot provide a timetable for when the leak will be fully contained, though the flow has lessened significantly as the pond has emptied.

An Associated Press reporter canoed downstream of the spill at the Dan River Steam Station and saw gray sludge several inches deep, coating the river bank for miles.

Williams, a program manager with the Dan River Basin Association, worried that the extent of the damage might not be fully understood for years.

"How do you clean this up?" he said, shaking his head as he churned up the ash with his paddle. "Dredge the whole river bottom for miles? ... It's going to go up the food chain, from the filter feeders, to the fish, to the otters and birds, to people."

Environmental regulators in North Carolina say they are still awaiting test results to determine if there is any hazard to people or wildlife. Coal ash is known to contain a witches' brew of toxic chemicals, including lead, arsenic, mercury and radioactive uranium.

Twenty miles downstream from the spill site and across the state line in Danville, Va., worried fishermen watched ash swirl in the water. A woman dipped her hand into the water and it came out coated slate gray.

Officials in Virginia Beach, Va., announced they had stopped drawing water from Lake Gaston, a major reservoir fed by the Dan.

Personnel from Duke Energy and state and federal agencies, including the U.S. Environmental Protection Agency and U.S. Fish and Wildlife Service, traveled the river in motorboats Wednesday, collecting water and sediment samples. A command center has been set up at the power company's facility in Eden.

An EPA spokeswoman did not respond to questions Wednesday, including when the test results on the samples collected by the agency would be made public.

Environmentalists and government regulators have been warning for years that the 31 ash ponds at Duke's power plants in North Carolina had the potential for calamity, especially after a similar pond in Kingston, Tenn., burst open in 2008.

"Even without a spill, these settling ponds have been releasing continuous contamination into the rivers downstream from coal-fired power plants," said Avner Vengosh, a professor of geochemistry at Duke University.

Duke Energy officials have always insisted the ponds at its facilities were well-engineered and safe. At the Dan River plant, the waste pond was expanded more than 40 years ago over an older storm water drainage pipe. That pipe, which empties into the river, collapsed without warning sometime last weekend, draining the pond above.

Duke has closed 14 of its oldest coal-burning power plants in recent years as more-stringent air quality regulations went into effect and the price of cleaner-burning natural gas has dropped. Though the coal-fired turbines at the Dan River facility were shut down in 2012 and replaced with an adjacent gas-burning plant, the company currently has no firm plans for when and how to clean up the remaining ash ponds.

Danny and Elsie Crews sat in their truck at a riverside park in Danville, watching the ashy water flow by. The couple likes to fish in the Dan for big blue catfish and striped bass.

They said they will still fish this year, but don't plan to eat what they catch.

"We're gonna eat what we have in the freezer now," said Elsie, 71, casting a wary eye at the gray water.

###

Coal ash spill into NC river still not contained

Thu Feb 6, 2014.

Associated Press |

Workers at a Duke Energy power plant in North Carolina are scrambling to plug a hole at the bottom of a pond where toxic ash from the coal-fired plant is stored.

The leak was first discovered Sunday. An Associated Press reporter canoed the Dan River on Wednesday and saw gray sludge several inches deep coating the river banks for miles. Twenty miles downstream in Danville, Va., wary fishermen watched gray swirls in the water.

Environmental regulators in North Carolina say they are still awaiting test results to determine if there is any hazard to people or wildlife. Officials in Danville, Va., say they are successfully filtering out contaminants in the drinking water provided to the city.

Danville is located along the Virginia-North Carolina border.

###

Tests show different arsenic levels in N.C. spill

By Michael Biesecker
The Associated Press
© February 7, 2014
RALEIGH, N.C.

The nation's largest electricity provider, state regulators and an environmental group issued differing data Thursday about the levels of toxins detected in a North Carolina river following a massive spill of coal ash.

Test results released by the N.C. Department of Environment and Natural Resources and Duke Energy showed arsenic and other potentially harmful contaminants were detected in the Dan River, but at levels considered safe for both people and fish.

The state and Duke cooperated to collect samples from the same sites, the closest about two miles downstream from the power plant where about 82,000 tons of toxic coal ash mixed with 27 million gallons of contaminated water has spilled into the river since Sunday. The spill produced a plume of contamination that coated the river bottom in sludge and turned the water slate gray for miles.

Water samples tested by a lab hired by the Waterkeeper Alliance contained levels of arsenic nearly nine times higher than the state's results, along with readings for other hazardous chemicals at levels far above state standards. Those samples were collected Tuesday just feet from where the toxic waste spewed into the river, the environmental group said.

Testing of tap water in Danville, Va., the closest city downstream at about 20 miles from the spill site, showed the contaminants were successfully being filtered from the municipal water supply.

Tom Reeder, director of the N.C. Division of Water Resources, said the state's test results did not yet give the Dan a clean bill of health. However, he said the findings that water quality in the river met state standards were very encouraging.

Asked why his agency didn't collect samples closer to the source of the spill, where the toxic chemicals would be less diluted and more likely to exceed state standards, Reeder responded that the goal of the testing was not to find out whether Duke had violated environmental laws or trigger hefty fines. He said there would be time later to sort that out.

"Obviously, if we took it directly underneath where the discharge is entering the water, particularly in a case like this, you might find some exceedances," Reeder said. "But what we're really interested in is finding out what the actual impact is in the environment, and in order to do that you have to allow for some mixing so you get an accurate picture."

Hundreds of workers continued Thursday to try to permanently seal a large drainage pipe that runs under a 27-acre pond where Duke had dumped ash from the coal-fired furnaces at its Dan River Steam Station for decades. The leak triggered when that pipe collapsed. It has slowed to a trickle, as most of the liquids had either leaked or been pumped away. Duke said it could not provide an estimate for when the spill would be completely contained.

[ORIGINAL] North Carolina Gov. Pat McCrory traveled to the plant Thursday and made his first public statements on the disaster. The trip was not listed on McCrory's public schedule and the media were not given an opportunity to ask him questions.

[CORRECTED] North Carolina Gov. Pat McCrory traveled to the plant Thursday and made his first public statements on the disaster. The trip was not listed on McCrory's public schedule.

"This is a serious spill and we need to get it under control as quickly as possible," McCrory said. "Our top priorities are ensuring the health and safety of the public as well as the wildlife in the Dan River vicinity and the river itself, and the best way to do that is to get this controlled and cleaned up."

McCrory said Duke officials had agreed to "spare no expense" to stop the leak. He said he had also been in contact with Virginia Gov. Terry McAuliffe and that officials in the two states were cooperating on the spill response.

McCrory worked for Duke for 28 years before retiring to launch his first campaign for governor in 2008. Watchdog groups have questioned whether the Republican governor's close ties to Duke executives have influenced how aggressively his administration regulates the company.

The test results released by the state and Duke showed water samples contained arsenic at up to 40 parts per billion. The state limit in rivers and lakes is 50 parts per billion. Readings for lead were recorded at 23 parts per billion, just below the state limit.

The state did note readings for copper were above state levels, but because it is a naturally occurring element in North Carolina waters, the state said further testing would be needed to see if the ash spill was to blame.

The U.S. Environmental Protection Agency has also conducted extensive testing. So far, those results have not been made public.

The numbers released by Duke and state regulators were in sharp contrast to findings by the Waterkeeper Alliance, an environmental group founded by Robert F. Kennedy Jr.

The Alliance said its samples showed arsenic at nearly 350 parts per billion, seven times the level the state says is safe for aquatic life. The group also reported readings of lead at 129 parts per billion, more than five times the state limit.

"If a terrorist group committed in North Carolina — for ideological reasons — a crime that Duke Energy has committed for profit, our nation would consider it an act of war against our country," Kennedy said.

At Duke's headquarters in Charlotte, about 30 protesters marched and carried signs urging Duke to "Clean Up Coal Ash Now." They said the company was negligent in the spill.

"Duke has assured us that these coal ash dumps are safe," said Bill Gupton, chairman of the Central Piedmont Group of the Sierra Club. "But they're not."

—

Associated Press writer Mitch Weiss reported from Charlotte.

#

NC regulators shielded Duke's coal ash pollution

AP foreign, Sunday February 9 2014

MITCH WEISS

Associated Press= RALEIGH, N.C. (AP) â

□” Over the last y

times to use the federal Clean Water Act to force Duke Energy to clear out leaky coal ash dumps like the

one that ruptured last week, spewing enough toxic sludge into a North Carolina river to fill 73 Olympic-sized pools.

Each time, they say, their efforts have been stymied by the N.C. Department of Environment and Natural Resources.

The state agency has blocked the citizen lawsuits by intervening at the last minute to assert its own authority under the federal act to take enforcement action. After negotiating with Duke, the state proposed settlements where the nation's largest electricity provider pays modest fines but is under no requirement to actually clean up its coal ash ponds.

Clean water advocates have long complained that state regulators are too cozy with the polluters they regulate. But they say that coordination and cooperation has become even more overt since the January 2013 inauguration of Gov. Pat McCrory, a pro-business Republican who worked at Duke Energy for 28 years.

In the wake of last week's massive spill, McCrory touted his track record with Duke over its coal-ash water pollution.

"My administration is the first in North Carolina history to take legal action against the utility regarding coal ash ponds," McCrory said, following a private meeting with company officials. "We have been moving on this issue since the beginning of my term and will continue to do so."

The environmentalists suggest his administration's real goal has been to shield the governor's former employer from far more severe and expensive penalties it might face if the cases ever made it to a federal courtroom.

Amy Adams was a regional director at the state environmental agency in charge of enforcing surface water standards for 21 North Carolina counties before she resigned in protest last November. A nine-year veteran of the agency, she said she was directed in her last months to help polluters meet compliance standards, rather than issue violations or fines.

"We have a governor right now that has very close ties to Duke, the state's largest polluter and a major political contributor to his campaigns," said Adams, who now works for the environmental group Appalachian Voices. "Under the new administration, North Carolina has changed the definition of who its customer is from the public and the natural resources it is supposed to protect to the industries it regulates. There's been a huge push away from environmental protection and toward promoting economic growth."

Since his unsuccessful first campaign for governor in 2008, campaign finance reports show Duke Energy, its political action committee, executives and their immediate families have donated at least \$1.1 million to McCrory's campaign and affiliated groups that spent on TV ads, mailings and events to support him.

After winning in 2012, McCrory has appointed former Duke employees like himself to key posts, including state Commerce Secretary Sharon Decker.

His appointee to oversee the state environmental department, Raleigh businessman John Skvarla, describes his agency's role as being a "partner" to those it regulates, whom he refers to as "customers."

"That is why we have been able to turn DENR from North Carolina's No. 1 obstacle of resistance into a customer-friendly juggernaut in such a short time," Skvarla wrote in a letter to the editor of the News & Observer of Raleigh, published in December. "People in the private sector pour their hearts and souls into

their work; instead of crushing their dreams, they now have a state government that treats them as partners."

On the afternoon of Feb. 2, a security guard patrolling the grounds of Duke's Dan River Steam Station discovered that a pipe running under a 27-acre toxic waste pond had collapsed. The company reports that up to 82,000 tons of coal ash mixed with 27 million gallons of contaminated water drained out, turning the river gray and cloudy for miles. The accident ranks as the third largest such coal ash spill in the nation's history.

The public was not told about the breach until the following day and initial reports provided by Duke and DENR did not make clear the massive scale of the disaster. McCrory made no public comments on the issue for five days, after the spill had grabbed national attention.

Environmental groups and federal regulators had been concerned for years about problems at Duke's 31 coal-ash waste ponds in North Carolina. Those concerns intensified after a 2008 disaster in Kingston, Tenn., where 5 million cubic yards of ash burst out of a basin, covering 300 acres and devastating a nearby river. The cleanup has cost \$1.2 billion.

After Kingston, the Southern Environmental Law Center began examining the issue with conservationist groups and targeted a coal ash lagoon along the Wateree River in South Carolina.

On behalf of the Catawba Riverkeeper Foundation, the legal group filed a lawsuit against South Carolina Electric & Gas for violating state environmental laws. They reached an agreement that requires the utility to empty its lagoons and move the ash to a lined landfill licensed to handle hazardous waste.

Next, the environmental groups turned their attention to Duke's coal ash ponds in North Carolina. The groups had long shared water samples from lakes and rivers near the waste ponds with state regulators that showed contamination, but no fines were issued.

So in January 2013, the SELC filed a notice of intent to sue Duke in federal court over coal ash pollution at the company's Asheville Steam Generating Plant.

The Clean Water Act allows citizen groups to file lawsuits over environmental violations, but it requires them to give 60-days' notice to state regulators to take enforcement action before the case can proceed. On the 58th day after the notice, DENR filed notice it would assert its jurisdiction.

On March 26, the SELC sent another notice for contamination from coal-ash lagoons at the Riverbend Steam Station in Gaston County. On the 60th day, state regulators again intervened.

On June 19, the legal group once again sent a 60-days' notice to sue Duke over coal ash pollution leaking from Duke's Sutton Power Plant near Wilmington.

"The Sutton site is scary bad," said Frank Holleman, a senior attorney at the Southern Environmental Law Center. "They've got significant groundwater contamination on one side headed toward the drinking water wells of a poor community. On the other side, you have a popular public fishing lake where they had significant fish die offs, and fish contamination."

Once again, state regulators filed an enforcement action against Duke on the very last day. This time, however, the state also filed enforcement actions for all of Duke's remaining coal ash sites in North Carolina, which effectively blocks environmentalists from pursuing action against them under the Clean Water Act.

Meanwhile, the state announced a deal with Duke to settle the litigation involving the Asheville and Riverbend sites.

The state proposed that Duke pay \$99,111 to settle the environmental violations at Asheville and Riverbend. Environmentalists criticize the proposed fines as couch-cushion change for a company valued at nearly \$50 billion.

"This is a common technique of regulators who are friendly with the law-breaking regulated entities," Holleman said. "They will come in and file at the very last minute and then quickly propose a favorable settlement to the lawbreaker to prevent the citizens group from leading the litigation."

Lacy Presnell, DENR's general counsel, confirmed that the proposed settlement doesn't require Duke to move its coal ash.

"The proposed consent order sets forth a number of steps which would be necessary to lead to a decision for appropriate remedial action," the state lawyer said. Prior to joining DENR last year, Presnell took leave from his partnership in a small Raleigh law firm that represents utility companies.

A 2010 study by George Washington University Law School professor Robert L. Glicksman looked at enforcement actions in the state of Maryland under the Clean Water Act. He found that North Carolina is not the only state where regulators moved within the 60 day period to negotiate settlements favorable to the utilities.

"In several instances, states have 'over-filed' enforcement actions within this time frame in state court," Glicksman's study found. "These cases are often pursued at the request of the violator, who solicits state enforcement to shield itself from a citizen suit."

In a written statement, Duke said it is committed to closing the ash basins at "many" of its 14 coal plants across North Carolina that are no longer being used, including the Dan River facility. The company said it is transitioning to a more environmentally sound method for disposing of coal waste.

While it is studying the issue, however, Duke said it has no timetable for removing the waste from its leaky unlined ponds. One option, the company said, would be to cover the dumps with giant tarps to block rainwater.

"We will rely on science to close ash basins in a way that protects groundwater long-term and is prudent for customers and plant neighbors," the company said. "Closing ash basins provides the ultimate resolution to these issues, and site-specific engineering studies to determine the most appropriate closure method for each are well under way."

A state judge in Charlotte must still approve the state's agreement with Duke before it can be finalized. The environmental groups are pushing to scuttle the deal. They say last week's disaster shows what is at stake if the company is not forced to move its toxic dumps away from rivers and lakes.

"There is nobody in the state of North Carolina who is better positioned to get Duke Energy to empty out these polluting coal ash lagoons and clean up their pollution at Riverbend and all these other sites than Gov. McCrory," Holleman said. "The governor is responsible for what DENR does and there is nobody who could take action better than him."

Weiss reported from Charlotte.

By MICHAEL BIESECKER, Associated Press; MITCH WEISS, Associated Press

RALEIGH, N.C. — As federal prosecutors launch a criminal investigation into Duke Energy's massive coal ash spill on the Dan River, two North Carolina lawmakers say they will push legislation to force the nation's largest electricity provider to clean out its leaky waste dumps across the state.

State Senate Rules Chairman Tom Apodaca and House Environment Committee Vice-Chairman Chuck McGrady say they will co-sponsor a bill seeking the removal of coal ash dumps like the one that ruptured Feb. 2, spewing toxic sludge into the Dan River and turning the water cloudy and gray for miles.

The two Henderson County Republicans live near Duke's coal-fired plant along the French Broad River south of Asheville, which has two large coal ash lagoons that tests show are contaminating groundwater.

The General Assembly's Environmental Review Commission has scheduled a hearing for Monday where officials from the N.C. Department of Environment and Natural Resources are to update legislators about the ongoing clean-up effort. The accident ranks as the third-largest such coal ash spill in the nation's history.

Beyond the one that burst open last week in Eden, Duke has 30 other dumps across the state at its current and retired coal-burning power plants, most located near lakes and rivers. Groundwater monitoring wells at Duke's Asheville show the unlined coal ash dumps at the plant have contaminated groundwater in violation of state health standards for boron, manganese, thallium and selenium.

"We've got the Duke facility in Arden sitting up here with 91 acres of coal ash, and it has always bothered me," Apodaca said. "When I saw the Dan River thing, I said 'We've got to do something.' We've got to get a date certain. We can't keep kicking this down the road."

Such legislation, if approved, would be a sharp turn for North Carolina's regulation of Duke's coal ash dumps, which environmentalists have been complaining for years have been allowed to pollute groundwater without any meaningful penalty from the state.

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2/17/2014

NC Gov. McCrory Briefed on Coal Ash Deal With Duke

By MICHAEL BIESECKER

Associated Press

<http://abcnews.go.com/US/wireStory/nc-gov-mccrory-briefed-coal-ash-deal-duke-22555259>

North Carolina's top environmental official says he briefed Gov. Pat McCrory about a negotiated settlement with Duke Energy that would have fined the \$50 billion corporation \$99,000 to resolve violations for groundwater contamination leaching from two huge coal ash dumps.

State Department of Environment and Natural Resources Secretary John Skvarla told lawmakers at an oversight hearing Tuesday that the Republican governor's only directions were to protect the environment and do the right thing.

The state agency has put its proposed deal with the nation's largest electricity provider on hold following the massive Feb. 2 spill of coal ash into the Dan River.

McCrory worked for Duke for 28 years before running for governor in 2008 and has benefited from more than \$1.1 million in campaign donations linked to the company.

APNewsBreak: Emails show coordination between Duke Energy and NC regulators on coal ash suits

by: MICHAEL BIESECKER

Associated Press

<http://www.startribune.com/politics/national/250211661.html>

RALEIGH, N.C. — Internal emails between staff at North Carolina's environmental agency show state regulators were coordinating with Duke Energy before intervening in efforts by citizens groups trying to sue the company over pollution leeching from its coal ash dumps.

The emails were provided Thursday to The Associated Press by the Southern Environmental Law Center, which had filed notice in January 2012 of its intent to sue Duke under the Clean Water Act.

Within days, the emails show a Duke lobbyist contacted the N.C. Department of Environment and Natural Resources, where staff exchanged messages discussing "how Duke wants to be sued."

The agency used its authority to intervene in the lawsuit, quickly negotiating a proposed settlement where the \$50 billion company would pay a \$99,100 fine but be under no requirement to stop its pollution.

Emails show ties between Duke, regulators

Correspondences suggest state, company coordinated on response to environmental groups

March 13, 2014

The Associated Press | Posted 8 months ago

RALEIGH — Internal emails between staff at North Carolina's environmental agency suggest state regulators were coordinating with Duke Energy before intervening in efforts by citizens groups trying to sue the company over groundwater pollution leeching from its coal ash dumps.

The emails were provided Thursday to The Associated Press by the Southern Environmental Law Center, which had filed notice in January 2013 of its intent to sue the nation's largest electricity company under the Clean Water Act.

Within days, the emails show a Duke lobbyist contacted the N.C. Department of Environment and Natural Resources to set up a meeting. The emails suggest the company and regulators were in frequent contact, with a lawyer for Duke even advising the state on legal strategy in an April 30, 2013, email.

At the time, lawyers for the environmental law center were worried that Duke and state regulators would work out a deal without any input from the citizens groups. They told the state that the groups couldn't legally be blocked from participating.

But the emails show that Duke lawyer Charles Case tried to find a case that could be used to convince a judge otherwise.

The email with the attachment was forwarded by Special Deputy Attorney General Kathy Cooper to Lacy Presnell, the top lawyer at the state environmental agency, on May 15. Cooper had been assigned to represent the state in the lawsuit.

“Mr. Presnell asked during our meeting for an example of participation by a intervenor on a non-party basis,” Case wrote, adding that he looked forward to speaking with them.

On July 3, a transcript shows Cooper went before Wake County Judge Paul Ridgeway and argued that the citizens groups should be excluded from the legal proceedings.

“They tried to keep us from being full parties in the case,” said Frank Holleman, a senior attorney for the law center. “Duke is the lawbreaker. DENR is the law enforcement agency. They are supposed to be protecting the people. Instead, they are working with the lawbreaker to find a way to limit the participation of the citizens groups in the law enforcement proceedings in the way that will benefit the lawbreaker. It's astonishing.”

The agency ultimately used its authority to intervene in the lawsuit, quickly negotiating a proposal where the \$50 billion company would pay a \$99,100 fine to settle environmental violations but be under no requirement to actually clean up its pollution.

Environmentalists have derided the proposal as a “sweetheart deal” by compliant state regulators to shield Duke from far harsher and more expensive penalties the company would have likely faced had the citizens groups been allowed move forward in federal court.

That proposed settlement was tabled last month after a massive spill from a Duke dump in Eden that coated 70 miles of the Dan River in toxic gray sludge. Coal ash contains a witch's brew of dangerous chemicals, including arsenic, lead and selenium.

Duke did not immediately respond to requests for comment.

Federal prosecutors have launched a criminal investigation in the wake of the spill, issuing at least 23 grand jury subpoenas to Duke executives and state officials.

The first batch of subpoenas was issued the day after an AP story raised questions about whether North Carolina regulators had helped shield Duke from a coalition of environmental groups that wanted to sue under the U.S. Clean Water Act to force the company to clean up its coal ash pollution. Among the items subpoenaed are all communications between the state agency and Duke regarding the lawsuits.

State environmental Secretary John Skvarla and Gov. Pat McCrory, a Republican who worked for Duke Energy for more than 28 years before retiring to campaign for the state's highest elected post, have bristled at suggestions they were acting to benefit Duke.

The nonprofit law center first filed notice of intent to sue Duke over groundwater contamination on Jan. 24, 2013. Under federal law, the lawsuit could proceed if the state did not take enforcement action within 60 days.

George Everett, the director of environmental and legislative affairs for Duke Energy, wrote a message the following week to Presnell. Everett says he wants to “preview” a private meeting between Duke and state regulators scheduled for later that month.

Following that Feb. 22 meeting, Cooper emailed a draft copy of the state's enforcement action against Duke to Debra Watts, supervisor of the groundwater protection unit. Cooper tells Watts she needs to check with Presnell about “how Duke wants to be sued” — referring to her uncertainty about which of the company's corporate names should be on the documents. Duke had merged with its primary in-state rival, Progress Energy, the prior year.

Agency spokesman Jamie Kritzer denied the emails showed evidence of collusion between state officials and Duke. He also pointed out that many of the exchanges included the lawyer from the office of Attorney General Roy Cooper, a Democrat who is expected to run against McCrory for governor in 2016.

“Attorney General Roy Cooper, through special deputy attorneys with his office, filed these actions against Duke Energy only after DENR requested the suits be filed,” Kritzer said. “The Attorney General's Office was extensively involved and, with the assistance of technical experts within DENR, played an active role in preparing all of the lawsuits and negotiating the proposed consent order with Duke Energy for two of the lawsuits against the utility.”

NC sides with Duke in appeal of coal ash ruling

RALEIGH, N.C. (AP) — North Carolina regulators are joining with Duke Energy in appealing a judge's ruling on cleaning up groundwater pollution leeching from the company's coal ash dumps.

The state Environmental Management Commission filed notice Monday that it intends to appeal a March 6 ruling by Superior Court Judge Paul Ridgeway.

The commission and Duke contend North Carolina law does not give the state the authority to order an immediate cleanup. Ridgeway ruled the state had been misinterpreting the law for years.

Environmentalists say the decision to file an appeal directly conflicts with public statements from Gov. Pat McCrory suggesting his administration is getting tough with his former employer after a Feb. 2 coal ash spill that coated 70 miles of the Dan River in toxic gray sludge.

McCrory, a Republican, worked for Duke more than 28 years prior to retiring to run for governor. The nation's largest electricity company and its employees have remained generous political supporters to

McCrory's campaign and GOP-aligned groups that support him, providing more than \$1.1 million in support since 2008.

Though the governor directly appointed eight of the commission's 15 members, McCrory spokesman Josh Ellis said the panel operates independently of the administration. The remaining seven members were appointed by state House Speaker Thom Tillis and Senate leader Phil Berger, both Republicans.

"The commission does not report to the governor," Ellis said.

Ellis declined to say whether the governor disagreed with the decision made by his appointees.

Charlotte lawyer Benne C. Hutson, whom McCrory appointed as the commission's chairman in July, said Tuesday that he recused himself from the special April 3 closed-session meeting where Ridgeway's ruling was discussed. Hutson said his law firm represents Duke, which presented a conflict of interest.

Vice Chairman Kevin C. Martin, a McCrory appointee who presided over the meeting, said he couldn't discuss matters under pending litigation or any legal advice the commission received. However, he said a concern with Ridgeway's ruling is that it wouldn't just affect Duke, but potentially thousands of other state-permitted wastewater lagoons in North Carolina.

He said staff from the state Department of Environment and Natural Resources advised the commission without taking a position on the issue.

"No one told us how to vote," he said.

On the same day the state commission met behind closed doors, Duke filed its notice appealing Ridgeway's decision. The company also asked the judge to delay enforcement of his order until the N.C. Court of Appeals rules. Ridgeway declined.

The latest legal tussle comes after a coalition of environmental groups moved last year to sue Duke under the federal Clean Water Act over its groundwater pollution.

After state officials met with the company's chief lobbyist, the state environmental agency used its authority to file environmental violations against all of Duke's 33 coal ash pits across the state. The agency, represented in court by the office of Democratic Attorney General Roy Cooper, then quickly proposed a settlement that would have fined Duke \$99,111 over pollution at two of its plants with no requirement that the \$50 billion company take action to clean up its pollution.

Environmentalists criticized the deal, which they contend was intended to shield the company from harsher penalties it would have likely faced in federal court. McCrory has denied his former employer received any preferential treatment from his administration.

The state agency withdrew from its proposed agreement with Duke following increased public scrutiny in the wake of the Dan River spill.

"Just a week after the state publicly abandoned its sweetheart deal with Duke and promised to 'enforce' the law, it has appealed a judicial ruling that confirmed the state's legal authority to enforce a real solution for coal ash contamination," said D.J. Gerken, a lawyer for the Southern Environmental Law Center.

"We're disappointed that this administration remains so determined to delay through litigation rather than move forward to stop ongoing pollution of North Carolina's rivers, lakes and groundwater."

Federal prosecutors have filed at least 23 grand jury subpoenas as part of an ongoing criminal investigation into the relationship between state regulators and the company prior to the spill.

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NC pulls deal with Duke on coal ash pollution

BY MICHAEL BIESECKER AND MITCH WEISS

The Associated Press

<http://www.thenewtribune.com/2014/03/21/3109059/nc-pulls-deal-with-duke-on-coal.html#storylink=cpy>

RALEIGH, N.C. — North Carolina regulators said Friday they have asked a judge to withdraw a proposed settlement that would have allowed Duke Energy to resolve environmental violations by paying a \$99,000 fine with no requirement that the \$50 billion company clean up its pollution.

The state Department of Environment and Natural Resources said in a statement that it would scuttle the proposed consent order to settle violations for groundwater contamination leeching from coal ash dumps near Charlotte and Asheville.

The decision comes after a Feb. 2 spill at a Duke coal ash dump in Eden coated 70 miles of the Dan River in toxic sludge.

North Carolina officials said they will now partner with the U.S. Environmental Protection Agency to pursue joint enforcement actions against Duke for Clean Water Act violations at Dan River and other sites.

Duke operates 14 facilities in North Carolina with leaky unlined coal ash dumps, all of which have been cited for polluting groundwater. Duke was also cited this week for illegally pumping 61 million gallons of contaminated water from two coal ash dumps into a canal leading to the Cape Fear River.

State officials touted the EPA's extensive experience from the ongoing cleanup in Kingston, Tenn., site of the largest coal ash spill in the nation's history in 2008.

"The state's goal is to clean up both the Dan River and to protect public health and the environment at the other Duke Energy facilities around the state, and we are pleased to announce that the EPA will join us as we address these important issues," said Gov. Pat McCrory, a Republican.

Before becoming governor, McCrory worked at Duke for more than 28 years. Records show the company and its employees have provided more the \$1.1 million to McCrory's campaign and GOP groups that supported his candidacy.

The scuttled settlement was initially tabled Feb. 11, the day after The Associated Press published a story highlighting what environmentalists criticized as a "sweetheart deal" to the governor's former employer.

The state only took legal action against Duke after a coalition of environmental groups represented by the Southern Environmental Law Center filed notice in January 2013 that they planned to sue Duke over its coal ash pollution under the Clean Water Act. The McCrory administration then used its authority under the act to file state violations against Duke and then quickly negotiated the settlement — a move environmentalists contend was intended to shield the nation's largest electricity company from far harsher penalties it might have faced in federal court.

Federal prosecutors are now conducting a criminal investigation of the Dan River spill and probing the relationship between Duke and the state officials charged with enforcing clean water laws. There have been at least 23 subpoenas issued since the spill and a grand jury met this week at the federal courthouse in Raleigh

McCrory and officials at the state environmental agency, which is known by the acronym DENR, have ardently defended the proposed deal with the company, even as they abandoned it.

Frank Holleman, a senior lawyer at the Southern Environmental Law Center, welcomed what he termed as "a total reversal" of the state's position.

"We hope that DENR will now work with us to enforce the law and force Duke Energy to clean up its illegal coal ash storage and move the ash to safe dry storage in lined landfills away from our rivers," Holleman said. "It is a shame that it took the Dan River spill and a federal criminal grand jury to get DENR to change course and that a year was lost while DENR tried to defend this now-defunct settlement."

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NC lawmakers push Duke to clean up coal ash dumps

Posted: Feb 15, 2014 11:17 AM EST

RALEIGH, N.C. -

As federal prosecutors launch a criminal investigation into Duke Energy's massive coal ash spill on the Dan River, two North Carolina lawmakers say they will push legislation to force the nation's largest electricity provider to clean out its leaky waste dumps across the state.

State Senate Rules Chairman Tom Apodaca and House Environment Committee Vice-Chairman Chuck McGrady say they will co-sponsor a bill seeking the removal of coal ash dumps like the one that ruptured Feb. 2, spewing toxic sludge into the Dan River and turning the water cloudy and gray for miles.

The two Henderson County Republicans live near Duke's coal-fired plant along the French Broad River south of Asheville, which has two large coal ash lagoons that tests show are contaminating groundwater.

The General Assembly's Environmental Review Commission has scheduled a hearing for Monday where officials from the N.C. Department of Environment and Natural Resources are to update legislators about the ongoing clean-up effort. The accident ranks as the third-largest such coal ash spill in the nation's history.

Beyond the one that burst open last week in Eden, Duke has 30 other dumps across the state at its current and retired coal-burning power plants, most located near lakes and rivers. Groundwater monitoring wells at Duke's Asheville show the unlined coal ash dumps at the plant have contaminated groundwater in violation of state health standards for boron, manganese, thallium and selenium.

"We've got the Duke facility in Arden sitting up here with 91 acres of coal ash, and it has always bothered me," Apodaca said. "When I saw the Dan River thing, I said 'We've got to do something.' We've got to get a date certain. We can't keep kicking this down the road."

Such legislation, if approved, would be a sharp turn for North Carolina's regulation of Duke's coal ash dumps, which environmentalists have been complaining for years have been allowed to pollute groundwater without any meaningful penalty from the state.

When citizen groups tried to use the Clean Water Act to sue Duke in federal court last year, the state agency intervened three times to use its authority to issue violations over the pollution in state court.

After negotiating with the company's lawyers behind closed doors, the state proposed a settlement that would allow Duke — the nation's largest electricity provider — to settle violations at facilities near Asheville and Charlotte for \$99,111. That deal, which was scuttled this week in the wake of the Dan River spill, included no requirement that Duke actually clean up its pollution.

On Monday, the U.S. Attorney's Office in Raleigh issued subpoenas to Duke and the state environmental agency demanding reams of documents related to the spill and the prior regulation of the company's coal ash sites.

In a written statement last week, Duke said it is committed to closing the ash basins at "many" of its 14 coal plants across North Carolina that are no longer in service, including the Dan River facility. The company said it is transitioning to a more environmentally sound method for disposing of coal waste.

While it is studying the issue, however, Duke said it has no timetable for removing the waste from its leaky unlined ponds. One option, the company said, would be to cover the dumps with giant tarps to block rainwater.

Rep. McGrady, a former national president of the Sierra Club, said that isn't good enough. He wants Duke to pump out the toxic coal sludge and move it somewhere safer.

"We need a long-term strategy to get out of the coal ash pond business," he said. "It's not unlike the issue of hog lagoons a decade ago. Unfortunately, sometimes we wait until we have a really big problem before we address it. Here we have an opportunity to assess the problem, develop a plan and systematically move forward."

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Lawyer hired by NC in spill probe represented Duke

Posted: Mar 24, 2014 6:51 PM EDT Updated: Mar 24, 2014 6:51 PM EDT
by Michael Biesecker, Associated Press

RALEIGH, N.C. -

The lawyer hired to represent North Carolina's environmental agency during a federal investigation into its regulation of Duke Energy's coal ash dumps once represented the utility company in a different criminal probe.

The state Department of Environment and Natural Resources has hired Mark T. Calloway of Charlotte to help respond to 20 grand jury subpoenas the agency and its employees have received after the Feb. 2 spill at Duke's Eden plant, which coated 70 miles of the Dan River in toxic sludge. Duke has been issued at least two subpoenas as part of that investigation.

The state regulatory agency has issued notice of eight environmental violations against Duke in the last month arising from the Eden spill and issues at the utility's other coal-fired plants, including the recent dumping of 61 million gallons of contaminated water into the Cape Fear River.

The state agency's chief lawyer said Monday that he saw no conflict of interest in Calloway's prior representation of Duke, the nation's largest electricity company.

Calloway did not respond Monday to messages seeking comment.

Legal experts said Calloway's representation of the state agency likely doesn't violate ethical standards, as long as Duke doesn't object to its former lawyer now representing a client with potentially adverse interests in the current criminal probe.

"As far as the rules of professional conduct and the State Bar ethics rules that govern attorney conflict, it doesn't sound like an obvious violation," said Eric Fink, an associate professor at Elon University School of Law. "But for a reasonable person looking at this, it would raise eyebrows."

"It's a fuzzy area. I see real grounds for members of the public to question what this says about the state's independence of Duke," he added.

Duke spokesman Tom Williams declined to comment on the issue.

A former federal prosecutor who now specializes in white-collar defense, Calloway represented Duke during a 2004 federal investigation into the company's accounting practices.

That probe began after a grand jury was convened after a 2002 audit ordered by commissions overseeing utilities in North and South Carolina found Duke underreported its profits by \$124 million over a three year span. Duke was cleared of any criminal wrongdoing, but agreed to reimburse customers \$25 million to settle the matter.

Records show other lawyers at the firm where Calloway is a partner — Alston & Bird — also defended Duke in a lawsuit filed by the company's retirees that was settled in 2011.

Lacy Presnell, the general counsel at the state environmental agency, said Calloway will assist with retrieving documents demanded by the subpoenas, but will not be asked to provide legal advice to employees called to testify before the grand jury.

"We reviewed all potential conflicts before he was chosen and determined there are no conflicts which prevent him from representing the department," Presnell said.

The agency, also known as DENR, did not respond to questions about who first recommended hiring Calloway.

In his biographical information listed on the firm's webpage, Calloway touts his representation of "a major energy company during a year-long federal grand jury investigation" as an example of his experience.

As part of its March 13 agreement with Alston & Bird, the state agency agreed to pay an hourly fee of up to \$350. The agency also waived any conflict that might arise from the law firm "representing another client or clients in a matter adverse" to the state, according to its contract.

Last week, the agency asked a judge to dismiss an agreement proposed before the Dan River spill that would have allowed Duke to settle environmental violations at two of its plants by paying a \$99,000 fine with no requirement that the company actually clean up its pollution. The deal was struck after the state agency intervened last year as environmental groups sought to sue Duke under the federal Clean Water Act over groundwater contamination leaching from its 33 unlined ash pits scattered across the state.

Gov. Pat McCrory worked at Duke for more than 28 years and the company and its executives have remained generous contributors to his campaign and GOP groups that support him. McCrory, a Republican, denies Duke received any special treatment from his administration.

But environmentalists have derided the now scuttled settlement as a "sweetheart deal" to the governor's former employer. Peter Harrison, an attorney for the WaterKeeper Alliance, said the hiring of Calloway provides further evidence of the administration's cozy ties with Duke.

"Governor McCrory and his appointees at DENR seem unable to at least appear as anything other than business associates of energy company they should be regulating," Harrison said. "By hiring Duke's former criminal defense attorney, they demonstrate an arrogant indifference toward regaining the confidence of the public."

In South Carolina on Monday, Duke's chief lobbyist sought to reassure regulators there that a disaster like the one affecting their northern neighbor couldn't happen in their state.

George Everett, the director of environmental and legislative affairs for Duke, told the S.C. Public Service Commission on Monday that its ash dumps in that state don't have stormwater pipes under them like the one that collapsed in Eden, triggering the massive Dan River spill.

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Ex-Duke Energy lawyer now advising NC regulators

By MICHAEL BIESECKER, Associated Press; MITCH WEISS, Associated Press

Nov. 13, 2014

RALEIGH, N.C. — A lawyer advising North Carolina's environmental agency on rewriting rules governing cleanup at Duke Energy's coal ash dumps previously represented the electricity company on the same issue.

Craig Bromby was hired in June as an assistant general counsel at the North Carolina Department of Environment and Natural Resources. He retired in March as a partner at the Raleigh office of Hunton & Williams, where his corporate clients included Duke.

Bromby assisted the North Carolina Environmental Management Commission this week as it considered key tweaks to state groundwater regulations that will impact his former client.

The changes are prompted by the state's new coal ash law passed in response to the massive Feb. 2 spill at a Duke dump in Eden, which coated 70 miles of the Dan River in gray sludge. Duke has 33 such dumps

across the state, all of which must be removed or capped by 2029 under the new law. The byproduct of burning coal to generate electricity, the ash contains numerous toxic heavy metals, including lead, arsenic and mercury.

The relationship between Duke and state officials has been under close scrutiny since the spill, including an ongoing federal criminal investigation.

Gov. Pat McCrory worked at Duke for 29 years before retiring, and environmental groups have criticized decisions by his administration that they contend improperly favored the company.

McCrory, a Republican, appoints members of the Environmental Management Commission, the panel that interprets state environmental laws and writes the rules governing how they are enforced. The governor has repeatedly denied that Duke has received special treatment.

Bromby sat in the front row at a committee meeting Wednesday where rules changes were discussed. On several occasions, state regulators turned to consult with him before suggesting specific legal language for the revised rules.

Bromby, 65, said he saw no ethical conflict between his new role and his past representation of Duke. "If there was an issue with it, I would think it would be more Duke Energy's issue because I'm now here, as opposed to anyone else's issue because I previously did work for Duke," said Bromby, who makes an annual state salary of \$105,000.

Drew Elliot, spokesman for the state environmental agency, said Bromby has operated "under a legal wall of separation" from issues directly affecting Duke's coal ash operations. Elliot said the groundwater rules under consideration by the environmental commission are a "ubiquitous issue that applies to many kinds of facilities in North Carolina and utilities represent only a tiny fraction."

Bromby is at least the second lawyer hired by the state agency over the last year who previously represented Duke. AP reported in March that Mark Calloway of Charlotte was retained to help coordinate the agency's response to the nearly two dozen federal subpoenas received after the Dan River spill. Calloway defended Duke during a 2004 federal investigation into the company's accounting practices.

Under rules governing conflicts of interest, lawyers representing state agencies must get a written waiver from any prior private-sector clients whose interests are "materially adverse" to those of the government. Duke Energy spokeswoman Paige Sheehan said Bromby has not sought such a waiver. "We don't have a view into the scope of work he's doing for DENR," Sheehan said.

North Carolina's environmental commission and enforcement agency are currently involved in several lawsuits and enforcement actions involving Duke and its ash dumps.

Among the key issues under litigation is what the state agency can require a company to do when groundwater contamination from a waste pit crosses into a neighboring property or pollutes rivers and lakes.

The Southern Environmental Law Center sued the commission last year on behalf of a coalition of environmental groups challenging the way groundwater regulations were being applied to coal ash dumps.

Duke intervened in the lawsuit to support the state's existing legal interpretation, which has allowed the company to study the pollution leaking from its dumps without being forced to clean it up. Court records show Bromby represented the company in the case.

Wake County Superior Court Judge Paul Ridgeway ruled in March that where pollution had spread beyond Duke's property line at a coal ash site, the utility is required to take "immediate action" to fix the problem. Both Duke and the Environmental Management Commission are appealing Ridgeway's ruling.

The rules changes under consideration would strike the language requiring "immediate action, potentially rendering the judge's ruling moot.

Southern Environmental Law Center attorney D.J. Gerken said it's "bewildering" that Bromby could go directly from arguing for Duke's favored interpretation of environmental laws to advising the officials rewriting those rules "to match the arguments he was making in court."

Deborah Rhode, a law professor at Stanford University, said there are issues raised by Bromby's work helping to redraft the groundwater rules.

"It's not just the concern that he might be violating the confidences of Duke, it may be that he's slanting his judgment in favor of Duke in terms of writing the rules," said Rhode, an expert on legal ethics. "I think the citizens of the state might see a problem with that."

###

North Carolina environmental agency hosts closed-door meeting on off-shore oil drilling plan

Article by: MICHAEL BIESECKER , Associated Press

Updated: November 6, 2014 - 8:05 PM

RALEIGH, N.C. — Officials from North Carolina, South Carolina and Virginia met privately Thursday with federal regulators and groups funded by oil and gas companies to discuss plans for drilling off the Atlantic coast.

A coalition of environmental groups sought to be allowed inside the Mid-Atlantic Outer Continental Shelf Oil and Gas Five-Year Program meeting, which was held at the North Carolina Museum of Natural Sciences in Raleigh.

Reporters were allowed to attend the end of the session only to hear closing remarks by North Carolina Gov. Pat McCrory, but only after a police officer posted at the door checked their credentials. By then, many of the 60 people on the list of invited attendees had left, leaving behind empty chairs.

McCrory, a Republican, has been outspoken in his support for launching oil and gas exploration off of the East Coast as soon as possible. On Thursday, he said the drilling would create jobs and bring needed revenue to the state.

"Exploring the potential oil and gas reserves located in the Outer Continental Shelf will solidify North Carolina's position as an energy leader and drive us to energy independence," said McCrory, who became governor after retiring from Charlotte-based Duke Energy after 29 years. "Increasing availability of natural gas will strengthen our economy and contribute to economic prosperity for decades to come."

Donald van der Vaart, the energy policy adviser for the North Carolina Department of Environment and Natural Resources, said in a letter sent to environmental groups last week that the meeting was kept invitation-only due to concerns raised by federal officials.

Among those in attendance were top officials from the U.S. Bureau of Ocean Energy Management, which regulates drilling operations and handles the sale and lease of off-shore drilling rights in federal waters.

"The inclusion of special interest groups and industry would allow for the potential of the appearance of influence on the permit application reviews currently underway by the Obama Administration," wrote van der Vaart, who previously worked for the oil company Shell and an electric utility that is now a subsidiary of Duke Energy.

"Therefore the joint decision was made to limit the invitation list to federal and state agencies and elected officials to avoid any potential for real or perceived conflicts of interest."

There is currently a federal moratorium on off-shore drilling along the Mid-Atlantic coast, but planning is underway for oil and gas extraction to begin in 2017.

John Filostrat, spokesman for the federal Ocean Energy Management bureau, denied his agency asked that the meeting be closed to the public.

Asked about Filostrat's remarks, state Environment Secretary John E. Skvarla repeated the assertion that it was a "collective decision" made with federal officials, though he refused to discuss specifically with whom those discussions had occurred.

"This is going to be a long process," Skvarla said. "There's going to be plenty of time for stakeholder involvement, and the process will be done right."

A copy of the agenda for Thursday's meeting and a list of attendees obtained by The Associated Press through a public records request shows at least three scheduled speakers from private groups with strong ties to energy companies.

Among those set to speak were Michael Zehr, an adviser at the Consumer Energy Alliance. According to its website, the alliance's members include numerous oil and gas companies engaged in off-shore drilling, among them ExxonMobil, BP, ConocoPhillips and Shell.

Also listed among those speaking was Charlie Williams, the executive director of the Center for Offshore Safety. That group's listed members include Halliburton, Chevron, Hess, Marathon, Anadarko and Transocean.

Also on the agenda were remarks from Dan Simmons, the vice president for policy at the Institute for Energy Research. The nonprofit think tank in Washington, D.C., does not disclose its donors, according to its spokesman Chris Warren.

Incorporation filings show the institute grew out of a Texas-based advocacy group co-founded by Charles Koch, the chief executive officer of Koch Industries. The institute's president, Thomas J. Pyle, previously worked as a lobbyist for Koch Industries, whose subsidiaries include extensive oil and gas operations.

Simmons previously worked at the American Legislative Exchange Council, an industry-funded group that has worked to ease environmental regulations for the extraction and burning of fossil fuels.

Also in attendance, according to the provided list, were more than a dozen federal officials that included Acting Bureau of Ocean Energy Management Director Walter Cruickshank, numerous congressional aides, a delegation of environmental regulators from the state of South Carolina and a manager from the Virginia Department of Mines Minerals and Energy.

Despite the oil and gas ties of some of the invited speakers, the event's organizers insisted there was no undue influence being exerted.

"No attendee is directly employed by industry," said Crystal Feldman, the energy communications director at North Carolina's environmental enforcement agency.

Environmental advocates whose requests to attend the meeting were rebuffed saw it differently.

"We can't recall any other administration convening a meeting of public officials to talk about a public process for developing a public resource, held in a public location, that is closed to the public," said Dustin Chicurel-Bayard, spokesman for the North Carolina Sierra Club. "It's hard to understand why the McCrory administration is being so secretive and shutting the public out of the conversation about the future of our coast."